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ABSTRACT

Common themes of human relationships that emerge when one examines legal ethics education and the visual arts are the foci of this paper which examines parallel developments in community attitudes and sociological and psychological forces during different historical periods. Comparisons of the ideological evolution of the fine arts and legal ethics instruction are examined, particularly in view of the classicism of the Academicism movement, the nonrational and emotional voice of the Expressionist Movement, the disillusionment of Dadaism, the close simulation and literal replication of Photo-realism, and the more recent Cubist concern with holism and multiple viewpoints. Legal educators and scholars are portrayed as artists engaging in different artistic styles. Problems of developing ethics courses for law students are examined. The author contends that while legal education is overly preoccupied with skills training and techniques, aesthetic principles of the visual arts can be emphasized to enhance legal ethics instruction. For example, concepts of figure and ground, or positive and negative space, may illuminate the contrasting interplay of positive and negative aspects of legal dilemmas. The author concludes that while teaching expertise is important, to be a moral agent in any personal or professional setting requires the artist's imagination and the creative capacity to emphatically grab hold of the whole essence of ethical dilemmas. (LH)

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ART AND THE TEACHING OF LEGAL ETHICS:

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Elizabeth D. Gee

The grand old professor I interviewed is considered a pillar of legal education. His office was like a series of mole hills of treasured belongings, faded books and papers brown with age. Sofa, desk, credenza, floor and all available space were piled several feet high with what seemed like brown nesting materials. Limping and with a cane, my frail host led me through the tunnels and mounds until we arrived at the heart of the nest where encircled chin deep with centuries' worth of human ideas we sat like two Beatrix Potter moles face to face. In response to my chirping and chattering the great professor clamped his hands behind his head and tipped backwards in his chair. His smile dominated other features of his now slanting face; nose, eyes, and brows receded in the relative distance, true to principles of perspective Mrs. Sanders taught our fifth grade art class. "I have the feeling you want to find something artistic about law schools or the teaching of legal ethics." I hesitatingly answered, "Yes, it's true."

I did not say anything more about wanting to find something artistic in law schools. But it was true. David's classicism, Manet's realism, and Van Gogh's expressionism have been my good

companions and teachers for many years. I wanted art to teach me about legal education and how law schools deal with the ethical problems of lawyers. I think it did. I looked across the topography of legal education and that of the visual arts until finally a few common themes of human relationships emerged. I found that education concerned with the ethical conduct of the legal profession resembles the visual arts in some primary formulations of style, content, and form. If these are common foundational elements of subject matter, design, and distinctive method of expression and not mere resemblances, then explorations and discussions about art may promote an understanding of the law school world and its attempt to prepare new lawyers for ethical problems of their profession.

A year ago I began interviewing thirty-one distinguished scholars about ways to improve the teaching of ethics in law school. One of the interviews took me to a professor's office where white walls outlined an assortment of lithographs, collages, and sketches. For quite some time the professor and I discussed the many different turns legal ethics education has taken over the past ten or so years since becoming a regular part of the law school curriculum. Far into our discussion the professor's glance caught a favorite print. He began to hypothesize:

> Legal education is an artifact in the same sense that banners are artifacts. The difference is not between things that are art forms, and things that aren't; it is between different styles of creating a professional culture. . . . The difference between Kandinsky and Bosh is intense self-consciousness about the artificiality of art--enormous

> awareness that everthing is constantly, uneasily on the verge of disintegrating into mere representational, just hopeless wordplay. That is the modernist stance. Roscoe Pound had an aesthetics . . . . The most traditional legal educators and legal scholars always thought of themselves as people creating powerful artifacts. They always thought of themselves as artists too; it is just a different artistic style.

Admittedly it is a radical analysis that would consider legal education or specifically legal ethics instruction an artifact or art form. Yet a course in legal ethics or any aspect of legal education does share certain attributes with the visual arts. Like architecture--the art of social space--a course in legal ethics involves community. Both architecture and legal ethics courses call upon humans as social beings interacting religiously, morally, and philosophically. The art of painting has been defined as the art of illusory space that extends beyond the reality of the flat surface. The time and place of the truth of a painting is located not in the surface layers of pigment but in deceptions of form created by molding and shading techniques and projected through perspective procedures to other and sometimes distant sites. As with a painting, behind the crust-like concreteness of moral words and deeds lies the infinite conscious space of the ethical actor--an authenticity of doubting, feeling, reasoning, and willing. A course in legal ethics also shares the elements of sculpture--the art of personal space. The envelope of space that wraps intimately forms of wood, marble, or bronze is reflective of the sense that the student of ethics is singly and

solitarily enclosed in individual experiences, understandings, and personal moral reflexes.

Restatements of Aesthetic Propositions

Comparisons of the ideological evolution of the fine arts and legal ethics instruction also suggest some common foundational elements and shared ways of belonging to their surrounding situations. Both art and legal ethics education appear to have participated in a similar transformation of fundamental ideas. Common denominators of subject matter and technique reveal a mutual ordering of priorities, perhaps as the consequence of a community of attitudes responding to similar sociological and psychological forces even though converging at different historical periods. The processes of artistry and education may tie together concerns and influences in much the same way that the majesty and profuseness of Handel's oratorios are an analogue of Bernini's architecture and Rubens' painting. Art and education about ethics may relate to each other in the sense that the underlying thematic structures of the composer Bach, the mathematician Godel, and the artist Escher register a unified ideological creed. These three masters, David Hofstader writes, processed their notes, numbers, and paints according to an endless self-referenential looping motif and formula for infinity.

The Academicism movement in art parallels certain features of one of the the oldest and perhaps the strongest trends in the development of the subject matter for legal ethics courses. The

pictoral attributes of Academicism were classic stylistic elements which conformed to formal values and rules. Logical clarity, artistic codes, rational analysis, and geometric exactitude were manifest in the standardized restraint of Poussin's landscapes where nature was methodologically organized by preestablished proportion. The predominant approach to legal ethics instruction also exhibits classic conventionalism and formalism. Emphasis on prescriptive codes, logical conceptualization and criticism, standard formulas for case reading and interpretation or problem solving appear to correspond with similar concerns of Academicism. Notably in keeping with Academicism is the trend some observers of legal education characterize as the legalistic approach to teaching ethics, or the emphasis on a set code and body of rules that defines ethical behavior as an act of rule following. Legalism may reflect the attempt by both art and law to dignify and legitimize their respective media through patronage of a predictive, unified, rational plan.

Legal ethics education also shares a stylistic voice with the Expressionist artistic movement. Expressionism sought nonrational, emotional, and psychological force and was concerned with the viewer's mental and aesthetic identification with the art work. Expressionists rejected rational representation and considered Academicism and classicism as sterile imitations of the real. Emile Nolde's mask and skull-like portraits reveal the real subconscious world of dissonant motivations and intense subjective

feelings that characterize Expressionism. An Expressionist-like approach to legal ethics instruction might be seen in some law schools' emphasis on psychological or humanistic theory or instructional techniques. Concern for self-scrutiny and personal reflection and interest in enhancing student sensitivity to their ethical self-identity in law and personal professional norms parallel the Expressionist's visual language of introspection and the nonrational.

A growing number of legal educators appear to be highly critical of the legal ethics curriculum and legal education in general. Many express a strong sense of disillusionment with the profession of law teaching. Some of these faculty argue that law schools are premised upon flawed assumptions--that at the root of law is an amoral political ideology which sustains a hierchical socio-economic class structure and inequities that are contrary to the fair distribution of justice. Sweeping reform or even possible eradication of the traditional legal education model is viewed by some as the only means of saving it from its alleged destructive legalism, materialism, and bourgeois hierarchy. Dadaism in art also was an expression of disillusionment, particularly with World War I. Like the iconooclastic legal educators, Dadaists were angered and frustrated over the traditional ideological props of their cultures. In the same sense that cynical law school faculty challenge the core of legal professionalism, Dadaists were anarchists who attacked the very

roots of aesthetic principles either through nihlistic debasing or by sarcasm and harlequinade. Marcel Duchamp's "Mona Lisa," which mimicked Leonardo's masterpiece with a moustache, thus consciously negated traditional aesthetic preoccupations and attempted to obliterate art through absurdity and randomness.

The clinical reform movement in legal education also has been important in legal ethics education. Advocates of clinical or experiential learning report the optimum learning environment as that in which the student engages in "real" or closely simulated law practice situations. Clinical legal education takes many forms, ranging from simulated role-playing problems to assuming actual responsibility for solving legal problems. In a similar vein, the modern artistic school of Photo-Realism is concerned with the literal replication of the object to the extreme of hard, photographic, representation. As with the law clinic, Photo-Realism seeks the literal imitation of a contemporary scene. An important function of this art form is to make the viewer instantly identify with the complex hierarchy of objects that comprise the spatial matrix of everyday life. In Photo-Realism and clinical education, commercial products--restaurant windows, jello boxes, legal depositions, or clients--provide an inventory of images that may be seen as ethical and unethical allegories such as greed and selflessness, fairness and unfairness.

Finally, Cubism, one of the most formative movements in art, may parallel interdisciplinary approaches to legal ethics

instruction. Cubism in the twentieth century redefined reality by pictorally conceptualizing the full integrity of the subject through the elimination of figure-ground relationship of object and surrounding space. Through various angles, multiple light sources, planes, and broken geometric forms, unity was sought through the simultaneous representation of many points of view rather than one. Particularly in the Synthetic branch of Cubism, Picasso and his collaborators used non-traditional media—paper, wood, and fabric--to discover the wholeness of the subject matter. A similar concern for wholeness is expressed by some observers of legal ethics instruction who advocate interdisciplinary or multiple orientations to teaching and research. The use of psychology, philosophy, economics, or literature in analyzing the ethics of lawyering from other than the strict professional technician's perspective suggests the Cubist concern with holism and multiple viewpoints.

Why Academicists, Expressionists, or even Dadaists may follow courses similar to legal ethics education in their stylistic evolution or their conceptual priorities may be explained by the obvious truth that neither art, law, or education is an entity free from the forces of society as a whole. Powerful environmental pressures affect the symbols and images of both the artist and the educator and shape human responses to professional and personal experiences.

An Aesthetic Response--the Figure-Ground Dialectic

The professor who portrayed legal educators and scholars as artists engaging in different artistic sytles also spoke of the problems of developing ethics courses for law students. He found moral education in law school aesthetically flawed and in a state of harmonious discord. Missing is the aesthetic counterbalance of tensions--realism and idealism, subjective and objective, dissonance and consonance. According to the professor, legal education is overly preoccupied with skills training; technique accounts for too much in law school for already desperately competitive and vocation-oriented students. Current ethics education emphasizes and encourages psychological narrowness and disallows that inner dialogue of thought, of intimacy with self that is fundamental to awakening moral critical consciousness. Legal ethics courses, he complained, provide few opportunities for self-conscious challenge--the process of disorientation and resolution that ferries the individual through evolutionary locks to higher levels of ethical awareness and sensitivity. Instead, legal ethics often is taught in the same manner as Property or Trusts and Estates, with impersonal emphasis on authorities. The underlying morality this approach promotes is quickness at cross reference to established procedures, directives, and courtesies. Finally, the professor remarked that many faculty have a growing sense of disaffection and despair in their ongoing professional situations, and that their despair breeds a sense of isolation,

contempt for authority, fear of change, and self-serving behavior. Yet many faculty and students continue to search for a community of shared ethical meanings and an end to isolation.

The aesthetic principles of the visual arts may instruct legal educators troubled by such disharmony and interested in ways of strengthening and improving legal ethics instruction. One important element of artistic harmony is concordance in the figure-ground relationship. In painting, the figure or subject constitutes the positive space. The object of main interest generally is set apart from its negative space or background by outlining, texture variation, color, or other contrasting elements. The viewer recognizes the importance and distinguishing features of the subject of an art work by virtue of its separation from its surrounding space. A sculpture, building, or bouquet of flowers painted on canvas defines and gives meaning to its adjacent context. In fact, without the figure or object, space does not appear to exist. We see and validate space only when it encases that which is contrasting. As such, the aesthetic quality is heightened by the contrasting interplay of positive and negative.

This aesthetic principle, I suspect, would argue for an educational space where various elements coexist in happy contrast. In an aesthetically harmonious arrangement all law school courses would not look or feel alike. The legal ethics course is potentially a figure that could provide stark contrast

to its background, or the entire law school curriculum. Yet there are many who would try to make it conform, to erase lines that separate positive and negative space. I believe this is a mistake. Toleration for contrast in one part of the curriculum may encourage appreciation for the value of other parts. A legal ethics course designed to develop student emotional competencies for dealing with one aspect of professional obligations may prompt appreciation of the place and value of analytical-oriented courses in enhancing students' abilities to cope with other legal problems. In other words, law school courses that probe the highly personal way of addressing professional ethics problems may heighten recognition of legal situations more appropriately addressed by rules, statements of obligation, and clear logical conceptualizations.

The figure-ground concept also may be relevant to the legal ethics curriculum as a distinct and self-enclosed course. This principle of art may suggest that there also should be antithesis within the confines of the single course. Richard Wasserstrom argues that a legal ethics course which encourages an understanding of legal doctrine and development of analytical competencies also should stress normative evaluation of doctrine which brings to light assumptions about its underlying justice and moral goodness. A legal ethics course that considers moral philosophy in evaluating alternative responses to ethical problems, or that weighs the relevance of particular character

traits such as benevolence or greed, may help students identify situations that are more appropriately addressed by codes, procedures, and professional courtesies.

The concept of figure-ground also may instruct educators that the legal ethics curriculum should harmoniously delineate the distinction of lawyers' personal professional moral responsibility from their personal ethical obligations. Sorting moral obligations according to personal and professional categories may heighten appreciation for both positive and negatives spaces, that is both for the importance of a background of individual and figure of strictly role-based ethical conduct. Everyone, not just lawyers, tends to place boundaries around dimensions of life for which he or she do or do not assume moral responsibility. This is a natural self-preservationist tendency, for it would be a heavy psychological burden to be perpetually self-conscious of the world's moral calamaties and tragedies. Lawyers have to make finite conscious moral selections and distinctions. Clearly to defend a guilty client requires a certain anesthetized consciousness, and so there may be a need for demarcation between figure and ground, between professional and personal morality. Yet, the intent of the disjunction should be to heighten awareness of the converse area, not to wipe it from memory nor avoid the law school's responsibility to address it.

Instruction in legal ethics should encourage the entrance of personal morality into legal education. Legal education holds

great potential for enabling students to confront their educational and professional identity in a way that permits them to express their persoanl values and confront apparent contradictions of thought and behavior required by law. One individuals I interviewed observed the need for self-identity as a powerful force in the life of the law student:

> Students are enormously interested in the question of self-definition, of self in the sense that they are not going out there and just making a living. They want all the reconciliations they now suspect they are not going to get by having chosen the law, particularly at a school like this [an elite school] because they choose the law not as a human service, but as an entry to organizations in the wealthiest sectors of society.

Concepts of figure and ground, or positive and negative space also may illuminate the relationship of teachers and students to the background of their educational or professional community. Law schools and law practices are gatherings or associations of individuals who share a sense of mutuality, responsiblity, and interests. There appears to be a fundamental human need for the individual to be a part of one's backgound, for the figure to exist in harmony with the community or surrounding space. We have a need to identify ourselves with the overall patterning of others. Yet there is also a human need to deny community and set oneself apart in the patterning. One's sense of individuality depends upon the ability to separate self from patterns--to distinguished oneself in a figure-ground relationship from that

which surrounds. As in art, it is the contrast that defines, shapes, and forms. There is a need to affirm and to disaffirm one's place within the educational and professional worlds. Individuals ethically define themselves by recognizing what they share or do not share with the ethical sensibilities of community members. The community ethic takes on meaning and reality only when the ethic of the individual, like a piece of sculpture, is contrasted to its environment, or in this case a professional or educational culture. Perhaps the lesson in this analogy is that legal educators should attend to the personal and professional moral concern of the student as a means of defining, understanding and validating the surrounding cultural space.

Finally, in delineating figure and ground the aesthetics of art insists upon a balanced respect for method and creativity. The best artists are master technicians. They draw, analyze, blend, and apply their medium with great precision. Even Jackson Pollock, who supposedly ignored principles and techniques, was a supremely skilled colorist. He claimed that only his subconscious governed his painting, yet the random application of swirls of paint that fill his canvases are rich with deliberate color blendings. Great artists are able to engage intuitive thought and conscious technical manipulation simultaneously.

To be a moral agent in any personal or professional setting requires more than technical expertise. It requires the artist's imagination. To step into someone else's shoes, and see the

perspective of another involved in a moral situation and the full range of contingencies that define an ethical circumstance, takes imagination and the creative capacity to empathically grab hold of the whole essence of the dilemma. A moral act is an event. It is like a play. It is a live force field in which actors and actresses indeed follow a script, recite words at a particular time, from a given position, order, and even with a predisposed inflection of voice. The lawyer confronted with a moral problem may refer to the Code, recall the admonition of a former law teacher, or reason through various principles and options. Yet an ethical dilemma played out in the small law office over the card shop in Bluefield, West Virginia, will never be the same as the moral moment in the court room across the street because of the personal uniqueness each participant ties to the web of an ethical event. Imagination, not method and technicalities, responds to this uniqueness.

A course in legal ethics, a set of principles, character disposition, or even the condition of the school setting, home, or general cultural environment can only produce a script for that act we call moral choosing. An ethical act displays more than the personal script, or past wanderings in learning, emotion, ideas, and experiences. Each occasion of moral choosing indeed draws upon many sources; but finally it is its own private occurence and a singular and parochial formula that lives within its personal moment alone. Yet method cannot be ignored, whether

it is a classroom technique or personal mechanism for schooling oneself. There is a reality in the script, both for the stage and for the ethical encounter. Indeed, artists do not forget the reality of method, the importance of analyzing line and color, the merits of scruitnizing perspective or classifying symbols.

Conclusion

My last interview took me on an early morning ride on the Long Island Railroad. The near abandoned train bored through clusters of warehouses and naked run-down homes. I disembarked into an Edward Hopper painting--a cool green elevated platform abandoned of human or mechanical life, set against a rectangular band of clear blue sky, interrupted only by tree tops and roof peaks, silent except for high clear tones of white morning light intensifying clear frigid air. The bright sun erased detail, as if Cezanne had reduced my environment to an arrangement of essential geometry--unreal, flat, distant, imaginary shapes. I decided at that moment that the artifact is more real than we acknowledge and has significance for learning about ethics or law schools. Legal ethics education may be viewed as an expressive design reflecting an organic system of pressures, tensions, and poetic truths fundamentally relating to the lives and times that formulated them. If this is true, and there is a coming together or concentration in ways of perceiving and understanding, if there is a shared reality in art, legal ethics, and law, then it may be

that some of the aesthetic principles of art have meaning, relevance, and significance beyond a specific curriculum.

Perhaps some day an artist will record with paint and canvas the unnatural fusion in the twentieth century of what many claim are diametrically opposed forces—art and law. It may be that such an artist would choose to express iconographically the forced marriage of creative, subjective, and free facets of humankind with that dimension which is most objective, rational, and constrained. Such a comparison might depict the imposition of law on art with the abduction of the mythological beautiful Europa by Zeus, who had disguised himself as a beast. Or, such an artist, perhaps influenced by the style of Expressionist painter Edward Munch, might represent Lady Justice as the "femme fatale" who extends to her suitor, the artist, the two-faced promise of protection and seductive corruption of artistic integrity.

Whatever the metaphor, law and art have been drawn to each other. Yet the final outcome of their marriage is impossible to predict at this moment. Perhaps their relationship will result in an offspring that shares equally the attributes of both parents. It may be that the artist Christo's "Running Fence" already was midwife to such a birth. From the beginning of the erection of the twenty-four-mile nylon curtain to the day it was dismantled, it was embroiled in litigation and ethical arguments: law was art, art was ethics, and art was law.

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